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9 UNITED STATES BANKRUPTCY COURT
 10 EASTERN DISTRICT OF CALIFORNIA
 11 SACRAMENTO DIVISION
 12

13 In re:
 14 CITY OF STOCKTON, CALIFORNIA,
 15 Debtor.

Case No. 2012-32118
 D.C. No. OHS-26
 Chapter 9

16 **CITY OF STOCKTON,
 17 CALIFORNIA’S MOTION PURSUANT
 18 TO FEDERAL RULE OF
 19 BANKRUPTCY PROCEDURE 7052 TO
 20 AMEND FINDINGS OF FACT IN
 21 OPINION REGARDING
 22 CONFIRMATION AND STATUS OF
 23 CALPERS**

Date: February 25, 2015
 Time: 10:00 a.m.
 Dept: Courtroom 35
 Judge: Hon. Christopher M. Klein

24 The Court’s Opinion Regarding Confirmation And Status Of CalPERS, filed February 4,
 25 2015 [Dkt. No. 1873] (the “Opinion”) should be amended to reflect recently discovered and
 26 uncontested facts and to conform certain findings with the Order Confirming First Amended Plan
 27 For The Adjustment Of Debts Of City Of Stockton, California, As Modified (August 8, 2014)
 28 [Dkt. No. 1875] (the “Confirmation Order” confirming the “Plan”). This Rule 7052 motion is not

1 intended to amend the Confirmation Order, which is accurate and correct. The City and creditors
2 are working diligently towards a Plan effective date that will occur as soon as possible.

3 **I. BACKGROUND**

4 On August 21, 2012, less than two months after the City of Stockton, California (“City”)
5 filed its chapter 9 petition, the City entered into a stipulation with Wells Fargo Bank, National
6 Association, in its capacity as Indenture Trustee (hereinafter, “Trustee”), regarding the use of
7 funds held in certain reserve and other accounts established by various pre-bankruptcy documents
8 and maintained by the Trustee.¹ That stipulation was approved by a Court order dated August 29,
9 2012. A copy of the Stipulation and Stipulation Order is attached hereto as Exhibit 1.

10 The Stipulation provides that as of the Petition Date, June 28, 2012, the aggregate amount
11 held by the Trustee in the reserve and other accounts attributable to the 2009 lease revenue bonds
12 owned by Franklin² was \$2,437,536.20. *See* Stipulation at 3:8, fn. 5. Pursuant to the Stipulation,
13 the Trustee was entitled to apply these monies towards the “satisfaction of interest, principal
14 and/or other amounts that are due and owing as of the date of the [Stipulation] Order or that may
15 become due and owing thereafter in connection with the Bonds (including costs and expenses of
16 the Trustee) and for such other purposes as are permitted by and in accordance with the terms of
17 the Indentures.” Stipulation, at 4. This amount represents funds in which the Trustee had and has
18 a valid, perfected security interest and which therefore could not be recovered by the City,
19 through bankruptcy or otherwise.

20 As a result, any monies from the reserve funds that were or may be applied to principal or
21 interest on the underlying bonds (but not to the Trustee’s expenses) should have been subtracted
22 from the Trustee’s total claim. However, due to an oversight by the City, this amount was not
23 accounted for in the calculations of either Franklin’s secured or unsecured claim reflected in the

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25 _____
26 ¹ *See* Stipulation Between the City Of Stockton And Wells Fargo Bank, National Association, As Indenture Trustee
27 For Relief From The Automatic Stay With Respect To Indenture Funds And Additional Funds (“Stipulation”),
28 attached as Exhibit A to the Order Granting Motion To Approve Stipulation Between the City Of Stockton And
29 Wells Fargo Bank, National Association, As Indenture Trustee For Relief From The Automatic Stay With Respect
30 To Indenture Funds And Additional Funds (Aug. 29, 2012) [Dkt. No. 533] (“Stipulation Order”).

² Franklin High Yield Tax-Free Income Fund and Franklin California High Yield Municipal Fund (collectively,
“Franklin”).

1 Plan.³ The City discovered this omission during its preparations for the effective date following
 2 the Court’s oral ruling confirming the Plan.

3 Following such discovery, the City raised the issue with Franklin and the Trustee, and the
 4 parties mutually agreed to amend the proposed confirmation order to correct the omission. At the
 5 status conference on January 20, 2015, the City notified the Court of the parties’ intention to
 6 insert an additional paragraph into the then-current version of the confirmation order so as to
 7 adjust the size of Franklin’s unsecured claim.⁴

8 The new paragraph, which was agreed to by the parties and included in the Confirmation
 9 Order, amended definition 102 of the Plan to reflect the correct amount of Franklin’s unsecured
 10 claim.⁵ The amount of Franklin’s unsecured claim, as stated in the Confirmation Order, was
 11 calculated as follows:

\$36,603,625.93	Franklin’s total claim, as of the Petition Date
- \$4,052,000.00	Franklin’s secured claim, to be paid in full pursuant to the Plan
- \$2,437,536.20	Funds held by the Trustee as of Petition Date
+ \$316,295.72	Funds used to pay trustee expenses related to the Franklin bonds
+ \$24,805.33	Trustee’s billed but unpaid expenses related to the Franklin bonds
+ \$25,000.00	Estimate of Trustee’s future expenses related to the Franklin bonds
<u>\$30,480,190.00</u>	Franklin’s unsecured claim (rounded)

17
 18 Crediting Franklin for \$2,071,435.15 (which nets out the Trustee’s fees) means that the
 19 Franklin secured claim increases from \$4,052,000.00 to \$6,123,435.15. This raises Franklin’s
 20 total recovery on its secured and unsecured claims from approximately 12% to approximately
 21 17.5%. The City believes that the Trustee’s expenses/professional fees were incurred postpetition
 22 and, in amending the Confirmation Order, agreed to treat the Trustee’s attorney fees as
 23 constituting an unsecured claim. *See In re SNTL Corp.*, 571 F.3d 826 (9th Cir. 2009).

24 ///

25 ///

26 _____
 27 ³ Throughout the chapter 9 case, the parties have referred to “Franklin’s claims” since Franklin owns all of the 2009
 bonds and the bonds are uninsured. However, under the terms of the Plan, the Golf Course/Park Secured Claim is
 held by the 2009 Golf Course Park Bond Trustee and not by Franklin. *See Plan*, at 14 (definition 101).

28 ⁴ *See Transcript of Proceedings* (Jan. 20, 2015), at 6:17-8:4.

⁵ Confirmation Order, ¶ 3.

Exhibit 1

18

FILED

AUG 29 2012

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

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Michael Gardener (*admitted pro hac vice*)
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14 **UNITED STATES BANKRUPTCY COURT**
15 **EASTERN DISTRICT OF CALIFORNIA**
16 **SACRAMENTO DIVISION**

17 In re:
18 CITY OF STOCKTON, CALIFORNIA,
19 Debtor.

Case No. 12-32118
DC No. ML-1
Chapter 9

**ORDER GRANTING MOTION TO APPROVE
STIPULATION BETWEEN THE CITY OF
STOCKTON AND WELLS FARGO BANK,
NATIONAL ASSOCIATION, AS INDENTURE
TRUSTEE FOR RELIEF FROM THE
AUTOMATIC STAY WITH RESPECT TO
INDENTURE FUNDS AND ADDITIONAL
FUNDS**

Date: September 4, 2012
Time: 9:30 a.m.
Place: United States Courthouse
501 I Street, Courtroom 35
Sacramento, CA 95814
Judge: Christopher M. Klein

1 The Court having considered the *Motion to Approve Stipulation Between the City of*
2 *Stockton and Wells Fargo Bank, National Association as Indenture Trustee for Relief from the*
3 *Automatic Stay with Respect to Indenture Funds and Additional Funds* (the "Motion"), any
4 opposition to the Motion, the record in this case, any evidence presented to the Court at or prior to
5 the hearing on the Motion, and any argument at the hearing on the Motion, and finding that:

6 (a) notice of the Motion and the hearing thereon were adequate and proper under the
7 circumstances; (b) the relief sought in the Motion is proper under the circumstances; and (c) good
8 cause appearing therefor,

9 **IT IS HEREBY ORDERED** that:

10 1. The Motion is granted.

11 2. The *Stipulation Between the City of Stockton and Wells Fargo Bank, National*
12 *Association as Indenture Trustee for Relief from the Automatic Stay with Respect to Indenture*
13 *Funds and Additional Funds* (the "Stipulation"), which Stipulation is attached to this Order as
14 **Exhibit A**, is approved.

15 3. To the extent the automatic stay provided for by 11 U.S.C. sections 362(a) and
16 922(a) applies to the Funds,¹ the Trustee is granted relief from the automatic stay to the extent
17 provided for in the Stipulation.

18 4. This Court shall retain jurisdiction to interpret and enforce this Order.

19
20 8/29/12 [Signature] W.F.B.
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22
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26

27 ¹ Capitalized terms not defined herein have the meaning ascribed to them in the Motion.

EXHIBIT A

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 2 Adrienne K. Walker (*admitted pro hac vice*)
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 Wells Fargo Bank, National Association, as Indenture Trustee
 13

14 **UNITED STATES BANKRUPTCY COURT**
 15 **EASTERN DISTRICT OF CALIFORNIA**
 16 **SACRAMENTO DIVISION**

17 In re: 18 CITY OF STOCKTON, CALIFORNIA, 19 Debtor. 20 21 22 23 24 25	Case No. 12-32118 DC No. ML-1 Chapter 9 STIPULATION BETWEEN THE CITY OF STOCKTON AND WELLS FARGO BANK, NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE FOR RELIEF FROM THE AUTOMATIC STAY WITH RESPECT TO INDENTURE FUNDS AND ADDITIONAL FUNDS
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26 Wells Fargo Bank, National Association, as Indenture Trustee (the "Trustee") with respect
 27 to (a) City of Stockton Certificates of Participation (Redevelopment Housing Projects) Series
 28 2003A and Taxable Series 2003B, in the original principal amount of \$13,300,000 (the "2003")

1 COPs”), (b) the Stockton Public Financing Authority Lease Revenue Bonds, Series 2004 (Parking
 2 and Capital Projects), in the original principal amount of \$32,785,000 (the “2004 Parking Bonds”),
 3 (c) Redevelopment Authority of the City of Stockton Revenue Bonds, Series 2004 (Stockton
 4 Events Center –Arena Projects) in the original principal amount of \$47,000,000 (the “2004 Arena
 5 Bonds”) and (d) the Stockton Public Financing Authority Lease Revenue Bonds, 2009 Series A
 6 (Capital Improvement Projects), in the original principal amount of \$35,080,000 (the “2009
 7 Bonds”; together with the 2003 COPs, the 2004 Parking Bonds and 2004 Arena Bonds, the
 8 “Bonds”)¹, and the City of Stockton, the debtor in the above-captioned case (the “City”; and
 9 together with the Trustee, the “Parties”), hereby enter into this *Stipulation Between The City of*
 10 *Stockton and Wells Fargo Bank, National Association, As Indenture Trustee For Relief From The*
 11 *Automatic Stay With Respect To Indenture Funds and Additional Funds* (the “Stipulation”) and
 12 stipulate as follows:

13 RECITALS

14 1. The 2003 COPs were issued in accordance with that certain Trust Agreement (the
 15 “2003 Indenture”) dated June 1, 2003, between Stockton Public Finance Authority (the
 16 “Authority”) and Trustee. The 2004 Parking Bonds were issued in accordance with that certain
 17 Indenture of Trust (the “2004 Parking Indenture”) dated as of June 1, 2004, between the Authority
 18 and the Trustee. The 2004 Arena Bonds were issued in accordance with that certain Indenture of
 19 Trust (the “2004 Arena Indenture”) dated as of March 1, 2004, between the Redevelopment
 20 Authority of the City of Stockton and the Trustee. The 2009 Bonds were issued in accordance with
 21 that certain Indenture of Trust (the “2009 Indenture”; and together with the 2003 Indenture, the
 22 2004 Parking Indenture and the 2004 Arena Indenture, the “Indentures”) dated as of September 1,
 23 2009, between the Authority and the Trustee.

24 2. Each of the Indentures requires the establishment and maintenance by the Trustee
 25 of Reserve Accounts. The funds in each Reserve Account may, among other things, be applied by

26
 27 ¹ Wells Fargo enters into this Stipulation in its capacity as Indenture Trustee of the Bonds. Wells Fargo also serves as
 28 Indenture Trustee for a number of other bonds for which the City is obligated, which are not subject to the terms of
 this Stipulation.

1 the Trustee to satisfy any and all deficiencies in payments of principal of and/or interest on
 2 respective series of Bonds and for the fees and expenses of the Trustee. *See, e.g.*, 2003 Indenture,
 3 §§3.04 and 12.03; 2004 Parking Indenture, §§5.06 and 7.02; 2004 Arena Indenture, §§5.06 and
 4 7.03; 2009 Indenture, §§5.05 and 7.03. As of August 17, 2012, the balance held in the Reserve
 5 Account for the 2003 COPs was approximately \$1,019,778.84, the balance held in the Reserve
 6 Account for the 2004 Parking Bonds was approximately \$1,849,625.98, the balance held in the
 7 Reserve Account for the 2004 Arena Bonds was approximately \$3,900,669.55 and the balance
 8 held in the Reserve Account for the 2009 Bonds was approximately \$2,245,260.94 (collectively,
 9 the “Indenture Funds”).

10 3. As of June 28, 2012 (the “Petition Date”), the aggregate amount due on the 2003
 11 COPs Bonds is \$12,061,475.52, composed of \$11,845,000 in principal and \$216,475.52 in interest,
 12 exclusive of costs, expenses and interest which have continued to accrue from and after such date.
 13 A payment in the amount of \$671,372.25 is due on September 1, 2012 on account of the 2003
 14 COPs and as of the date hereof, the City has failed to make the required Lease Payments.²

15 4. As of the Petition Date, the aggregate amount due on the 2004 Parking Bonds is
 16 \$32,942,312.49, composed of \$31,640,000 in principal and \$1,302,312.49 in interest, exclusive of
 17 costs, expenses and interest which have continued to accrue from and after such date. A payment
 18 in the amount of \$1,163,658.13 is due on September 1, 2012 on account of the 2004 Parking
 19 Bonds and the City has confirmed to the Trustee that the City will not make such payment.³

20 5. As of the Petition Date, the aggregate amount due on the 2004 Arena Bonds is
 21 \$46,279,723.94, composed of \$45,590,000 in principal and \$689,723.94 in interest, exclusive of
 22 costs, expenses and interest which have continued to accrue from and after such date. A payment
 23 in the amount of \$1,516,113.75 is due on September 1, 2012 on account of the 2004 Arena Bonds,
 24
 25

26 ² The Trustee also has on hand the following additional indenture-held funds with respect to the 2003 COPs: Lease
 Payment Fund - \$647,196.69 (the “2003 Additional Funds”).

27 ³ The Trustee also has on hand the following additional indenture-held funds with respect to the 2004 Parking Bonds:
 Revenue Fund - \$1.48 (the “2004 Parking Additional Funds”).

1 and while the City has indicated that there is sufficient tax increment revenue to make such
2 payment, this Stipulation is being entered in the excess of caution.⁴

3 6. As of the Petition Date, the aggregate amount due on the 2009 Bonds is
4 \$37,073,065.94, composed of \$35,080,000 in principal and \$1,993,065.94 in interest, exclusive of
5 costs, expenses and interest which have continued to accrue from and after such date. A payment
6 in the amount of is \$1,207,918.75 due on September 1, 2012 on account of the 2009 Bonds and the
7 City has confirmed to the Trustee that the City will not make such payment.⁵

8 NOW, THEREFORE, for good and valuable consideration, and based on the foregoing
9 facts, the Parties hereby agree as follows:

10 **AGREEMENT**

11 1. Relief from the Automatic Stay. Upon the entry of an order approving this
12 Stipulation (the "Order"), the Trustee shall be granted relief from the automatic stay provided for
13 in sections 362(a) and 922 of title 11 of the United States Code (the "Bankruptcy Code") with
14 respect to the Indenture Funds and the Additional Funds. Pursuant to the Order, the Trustee is
15 shall be authorized, but not required, to apply the Indenture Funds and the Additional Funds to the
16 satisfaction of interest, principal and/or other amounts that are due and owing as of the date of the
17 Order or that may become due and owing thereafter in connection with the Bonds (including costs
18 and expenses of the Trustee) and for such other purposes as are permitted by and in accordance
19 with the terms of the Indentures.

20 2. Effectiveness. Notwithstanding anything contained in Rule 4001(a)(3) of the
21 Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), this Stipulation shall be
22 effective upon the entry of an Order by this Court approving this Stipulation on the docket of the
23 above-captioned case and the fourteen-day stay contemplated by Bankruptcy Rule 4001(a)(3) shall

24 _____
25 ⁴ The Trustee also has on hand the following additional indenture-held funds with respect to the 2004 Arena Bonds:
Revenue Fund - \$68.61; Interest Fund - \$3.91 (the "2004 Arena Additional Funds").

26 ⁵ The Trustee also has on hand the following additional indenture-held funds with respect to the 2009 Bonds: Revenue
27 Fund - \$7.61; Interest Account - \$1.71; Project Fund - \$192,725.30 (the "2009 Additional Funds" and together with
the 2003 Additional Funds, the 2004 Parking Additional Funds and the 2004 Arena Additional Funds, the "Additional
28 Funds"). Pursuant to Paragraph 1 hereof, the Parties stipulate to relief from the automatic stay provided for in sections
362(a) and 922(a) of the Bankruptcy Code with respect to the Additional Funds.

1 not apply. If any provision of the Order approving this Stipulation is later modified, vacated or
2 stayed by subsequent order of this or any other Court for any reason, such modification, vacation
3 or stay shall not affect the validity of any action taken pursuant to such Order prior to the later of
4 (a) the effective date of such modification, vacation or stay, or (b) the entry of the order pursuant
5 to which such modification, vacation or stay was established.

6 3. Reservation of Rights. Except as expressly set forth herein, each of the Parties
7 reserves all of its respective rights under the Bankruptcy Code, the Bankruptcy Rules any
8 applicable law, the Indentures, the Bonds and all related documents, including, without limitation,
9 the rights of the Parties to seek any relief (or to oppose any such relief) to exercise any of their
10 rights and remedies under the Bankruptcy Code at any time, or that the automatic stay under
11 section 362(a) and 922 is in fact not applicable to the actions contemplated herein. Without
12 limiting the foregoing, nothing herein shall preclude the Trustee from seeking any other relief that
13 it may deem appropriate, including, without limitation, additional relief from the automatic stay.
14 Further, this Stipulation is executed as a precautionary matter, and nothing in this Stipulation is or
15 shall be deemed to be an admission or evidence that the automatic stay in fact applies to the
16 actions contemplated herein.

17
18 IN WITNESS WHEREOF, the Parties have caused this Stipulation to be duly executed on
19 the date set forth below.

20
21 Dated: August 21, 2012

/s/ William W. Kannel
William W. Kannel
**MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO
P.C.**
Attorneys for Wells Fargo Bank, National
Association, as Indenture Trustee

22
23
24
25
26 Dated: August 21, 2012

/s/ Marc A. Levinson
Marc A. Levinson
ORRICK HERRINGTON & SUTCLIFFE LLP
Attorneys for City of Stockton, Debtor